



Senate

General Assembly

File No. 592

January Session, 2007

Substitute Senate Bill No. 1243

Senate, April 26, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING SPENDTHRIFT AND DISCRETIONARY TRUSTS AND THE CLAIMS OF CREDITORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) As used in sections 1 to
2 10, inclusive, of this act:

3 (1) "Beneficiary" means a person that (A) has a present or future
4 interest in a trust, vested or contingent, or (B) in a capacity other than
5 that of trustee, holds a power of appointment over trust property, but
6 does not include an appointee under a power of appointment unless
7 and until the power of appointment is exercised and the trustee has
8 knowledge of such exercise and the identity of such appointee;

9 (2) "Charitable trust" means a trust, or portion of a trust, created for
10 the relief of poverty, the advancement of education or religion, the
11 promotion of health, governmental or municipal purposes or other
12 purposes the achievement of which is beneficial to the community;

13 (3) "Person" means an individual, corporation, business trust, estate,
14 trust, partnership, limited liability company, association, joint venture,
15 court, government, governmental subdivision, agency or
16 instrumentality, public corporation or any other legal or commercial
17 entity;

18 (4) "Power of withdrawal" means a presently exercisable general
19 power of appointment other than a power exercisable only upon
20 consent of the trustee or a person holding an adverse interest;

21 (5) "Revocable", as applied to a trust, means revocable by the settlor
22 without the consent of the trustee or a person holding an adverse
23 interest;

24 (6) "Settlor" means a person, including a testator, who creates, or
25 contributes property to, a trust. If more than one person creates or
26 contributes property to a trust, each person is a settlor of the portion of
27 the trust property attributable to such person's contribution except to
28 the extent another person has the power to revoke or withdraw such
29 portion, except as otherwise provided in section 9 of this act;

30 (7) "Spendthrift provision" means a term of the trust that restrains
31 both voluntary and involuntary transfer of a beneficiary's interest; and

32 (8) "Terms of the trust" means the manifestation of the settlor's
33 intent regarding a trust's provisions as expressed in the trust
34 instrument or as may be established by other evidence that would be
35 admissible in a judicial proceeding.

36 Sec. 2. (NEW) (*Effective October 1, 2007*) (a) To the extent a
37 beneficiary's interest in a trust is not subject to a spendthrift provision,
38 except as otherwise provided in sections 1 to 10, inclusive, of this act,
39 the court may authorize a creditor or assignee of the beneficiary to
40 reach the beneficiary's interest by attachment of present or future
41 distributions to or for the benefit of the beneficiary. The court may
42 limit the award to such relief as is appropriate under the
43 circumstances, provided, the court may not grant relief beyond the

44 attachment of present or future distributions.

45 (b) (1) A trustee of a charitable trust and a person holding and
46 administering an endowment fund or an institutional fund, as defined
47 respectively in section 45a-527 of the general statutes, shall not
48 mortgage, hypothecate, pledge, use as collateral or otherwise
49 encumber any of the following assets of such charitable trust,
50 endowment fund or institutional fund, if the source of the asset was a
51 charitable gift:

52 (A) Funds for which expenditures are restricted by the settlor for a
53 purpose other than the general purposes of a charity or institution; and

54 (B) The principal or corpus of a charitable trust or institutional fund
55 for which such principal or corpus is restricted to investment or
56 endowment purposes.

57 (2) No creditor, receiver appointed pursuant to chapter 920 of the
58 general statutes or trustee appointed under Title 11 of the United
59 States Code may attach, garnish, lien or otherwise use funds subject to
60 subdivision (1) of this subsection, to apply such funds to payment of a
61 charitable beneficiary's debt or the receivership or bankruptcy estate.

62 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) A spendthrift provision is
63 valid only if it restrains both voluntary and involuntary transfer of a
64 beneficiary's interest. A provision in the terms of the trust permitting
65 the voluntary transfer of a beneficiary's interest, but only with the
66 consent of another person or entity, including the trustee, specified in
67 the terms of the trust, shall be deemed to be an acceptable restraint on
68 voluntary transfer.

69 (b) A term of a trust providing that the interest of a beneficiary is
70 held subject to a "spendthrift trust", or words of similar import, is
71 sufficient to restrain both voluntary and involuntary transfer of the
72 beneficiary's interest.

73 (c) A beneficiary may not transfer an interest in a trust in violation
74 of a valid spendthrift provision and, except as otherwise provided in

75 sections 1 to 10, inclusive, of this act, a creditor or assignee of the
76 beneficiary may not reach the interest or a distribution by the trustee
77 before its receipt by the beneficiary.

78 (d) A spendthrift provision is valid even though a beneficiary is
79 named as the sole trustee or as a cotrustee of the trust.

80 (e) A spendthrift provision is enforceable against a former spouse of
81 a beneficiary.

82 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) For the purposes of this
83 section, "child" includes any person for whom an order or judgment
84 for child support has been entered in this or another state.

85 (b) Even if a trust contains a spendthrift provision, a beneficiary's
86 child who has a judgment or court order against the beneficiary for
87 support or maintenance may obtain from a court an order attaching
88 present or future distributions to or for the benefit of the beneficiary,
89 but only if distributions may be made for support of the beneficiary
90 under the terms of the trust.

91 (c) A spendthrift provision is unenforceable against a claim of this
92 state or the United States to the extent a statute of this state or federal
93 law so provides.

94 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) For the purposes of this
95 section, "child" includes any person for whom an order or judgment
96 for child support has been entered in this or another state.

97 (b) Except as otherwise provided in subsection (c) of this section or
98 subdivision (2) of subsection (a) of section 6 of this act, whether or not
99 a trust contains a spendthrift provision, a creditor of a beneficiary may
100 not compel a distribution that is subject to the trustee's discretion, even
101 if:

102 (1) The discretion is expressed in the form of a standard of
103 distribution; or

104 (2) The trustee has abused the discretion.

105 (c) To the extent a trustee has not complied with a standard of
106 distribution or has abused a discretion:

107 (1) A distribution may be ordered by the court to satisfy a judgment
108 or court order against the beneficiary for support or maintenance of
109 the beneficiary's child; and

110 (2) The court may direct the trustee to pay to the child only such
111 amount as is equitable under the circumstances, but in no event more
112 than the amount the trustee would have been required to distribute to
113 or for the benefit of the beneficiary had the trustee complied with the
114 standard or not abused the discretion.

115 (d) This section does not limit any preexisting right of a beneficiary
116 to maintain a judicial proceeding against a trustee for an abuse of
117 discretion or failure to comply with a standard for distribution.

118 (e) With respect to the powers set forth in section 9 of this act, the
119 provisions of this section shall apply even though the beneficiary is the
120 sole trustee or a cotrustee of the trust.

121 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) Whether or not the terms
122 of the trust contain a spendthrift provision, the following rules apply:

123 (1) During the lifetime of the settlor, the property of a revocable
124 trust is subject to claims of the settlor's creditors.

125 (2) Except as provided in subdivisions (4) and (5) of this subsection,
126 with respect to an irrevocable trust, a creditor or assignee of the settlor
127 may reach the maximum amount that can be distributed to or for the
128 benefit of the settlor. If a trust has more than one settlor, the amount
129 the creditor or assignee of a particular settlor may reach may not
130 exceed the settlor's interest in the portion of the trust attributable to
131 such settlor's contribution.

132 (3) With respect to a trust created pursuant to 42 USC

133 1396p(d)(4)(A) or (C), as from time to time amended, the court may
134 limit the award to a creditor of the settlor under subdivision (1) or (2)
135 of this subsection to such relief as is appropriate under the
136 circumstances, considering, among any other factors determined to be
137 appropriate by the court, the supplemental needs of the beneficiary.

138 (4) A creditor or assignee of the settlor may not reach the assets of
139 an irrevocable trust, in whole or in part, solely because of the existence
140 of a discretionary power granted to the trustee by the terms of the
141 trust, or any other provision of law, to pay directly to the taxing
142 authorities or to reimburse the settlor for any tax on trust income or
143 principal which is payable by the settlor under the law imposing such
144 tax.

145 (5) A creditor or assignee of a settlor may not reach the assets of an
146 irrevocable trust, except in accordance with the terms of the trust
147 instrument, if: (A) All of the settlors of the trust are commercial entities
148 organized to conduct business activities; (B) at least one trustee is a
149 commercial entity organized to conduct business activities; and (C) the
150 trust is created by contract in order to facilitate a business purpose of
151 the settlors.

152 (6) After the death of a settlor, and subject to the settlor's right to
153 direct the source from which liabilities will be paid, except as
154 otherwise provided in section 45a-472 of the general statutes, the
155 property of a trust that was revocable at the settlor's death is subject to
156 claims of the settlor's creditors, costs of administration of the settlor's
157 estate, the expenses of the settlor's funeral and disposal of remains,
158 and the allowance to a surviving spouse or family as provided in
159 section 45a-320 of the general statutes to the extent the settlor's probate
160 estate is inadequate to satisfy such claims, costs, expenses and
161 allowance.

162 (b) With respect to claims, expenses and taxes in connection with
163 the settlement of a trust that was revocable at the settlor's death, the
164 following rules apply:

165 (1) Any claim of a creditor that would be barred against the
166 fiduciary of a decedent's estate, the estate of the decedent or any
167 creditor or beneficiary of the decedent's estate shall be barred against
168 the trustee, the trust property and the creditors and beneficiaries of the
169 trust.

170 (2) The trustee may use the optional notice procedures set forth in
171 section 45a-357 of the general statutes and, upon the trustee's
172 compliance with such procedures, any person notified in accordance
173 with said section shall be forever barred from asserting or recovering
174 on any claim such person may have from the trustee, the trust
175 property or any creditor or beneficiary of the trust.

176 (3) The provisions of section 45a-365 of the general statutes
177 concerning the order of payment of claims, expenses and taxes shall
178 apply to the settlement of the revocable trust.

179 (4) If any claim is not presented in writing to the fiduciary of the
180 settlor's estate or the trustee within one hundred fifty days from the
181 date of the appointment of the first fiduciary of the settlor's estate or, if
182 no fiduciary is so appointed, within one hundred fifty days after the
183 publication of a newspaper notice in accordance with subdivision (5)
184 of this subsection, no trustee shall be chargeable for any assets that a
185 trustee may have paid or distributed in good faith in satisfaction of any
186 lawful claims, expenses or taxes or to any beneficiary before such claim
187 was presented. A payment or distribution of assets by a trustee shall be
188 deemed to have been made in good faith unless the creditor can prove
189 that the trustee had actual knowledge of such claim at the time of such
190 payment or distribution. Such one-hundred-fifty-day period shall not
191 be interrupted or affected by the death, resignation or removal of a
192 trustee, except that the time during which there is no fiduciary in office
193 shall not be counted as part of such period.

194 (5) A trustee may cause newspaper notice to be published at least
195 once notifying all persons having claims to present their claims to the
196 trustee. Such newspaper notice shall state: (A) The name of the trustee
197 and the address at which claims should be presented; (B) that persons

198 with claims should promptly present those claims to the trustee; and
199 (C) that failure to promptly present any such claim may result in the
200 loss of rights to recover on such claim.

201 (c) For the purposes of this section:

202 (1) Except as otherwise provided in section 9 of this act, during the
203 period the power may be exercised, the holder of a power of
204 withdrawal is treated in the same manner as the settlor of a revocable
205 trust to the extent of the property subject to the power; and

206 (2) Upon the lapse, release or waiver of the power, the holder is
207 treated as the settlor of the trust only to the extent the value of the
208 property affected by the lapse, release or waiver exceeds the greater of
209 the amount specified in Section 2041(b)(2) or Section 2514(e) of the
210 Internal Revenue Code of 1986, and the regulations thereunder, or
211 Section 2503(b) of the Internal Revenue Code of 1986, and the
212 regulations thereunder, in each case as in effect on the effective date of
213 this section.

214 Sec. 7. (NEW) (*Effective October 1, 2007*) (a) For the purposes of this
215 section, "mandatory distribution" means a distribution of income or
216 principal that the trustee is required to make to a beneficiary under the
217 terms of the trust, including a distribution upon termination of the
218 trust. The term excludes a distribution subject to the exercise of the
219 trustee's discretion, regardless of whether the terms of the trust (1)
220 include a support or other standard to guide the trustee in making
221 distribution decisions, or (2) provide that the trustee "may" or "shall"
222 make discretionary distributions, including distributions pursuant to a
223 support or other standard.

224 (b) Except as otherwise provided in section 9 of this act, whether or
225 not a trust contains a spendthrift provision, a creditor or assignee of a
226 beneficiary may reach a mandatory distribution of income or principal,
227 including a distribution upon termination of the trust, if the trustee has
228 not made the distribution to the beneficiary within a reasonable time
229 after the mandated distribution date.

230 Sec. 8. (NEW) (*Effective October 1, 2007*) Trust property is not subject
231 to personal obligations of the trustee, even if the trustee becomes
232 insolvent or bankrupt.

233 Sec. 9. (NEW) (*Effective October 1, 2007*) (a) For all purposes under
234 sections 1 to 10, inclusive, of this act, whether or not a trust contains a
235 spendthrift provision, a creditor of a beneficiary, other than a creditor
236 of the settlor if the settlor is a beneficiary of the trust, may not attach or
237 compel a distribution of property that is subject:

238 (1) To a power of withdrawal held by the beneficiary if the value of
239 the property subject to the power does not exceed the greater of the
240 amount specified in Section 2041(b)(2) or Section 2514(e) of the Internal
241 Revenue Code of 1986, and the regulations thereunder, or Section
242 2503(b) of the Internal Revenue Code of 1986, and the regulations
243 thereunder, in each case as in effect on the effective date of this section;

244 (2) Except as otherwise provided in subsection (c) of section 5 of this
245 act, to a power, whether mandatory or discretionary, held by the
246 trustee of the trust, including a power held by the beneficiary as the
247 sole trustee or a cotrustee of the trust, to make distributions to or for
248 the benefit of the beneficiary, if the power is exercisable by the trustee
249 only in accordance with an ascertainable standard relating to such
250 beneficiary's individual health, education, support or maintenance
251 within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the
252 Internal Revenue Code of 1986, and the regulations thereunder, as in
253 effect on the effective date of this section; or

254 (3) To a power, whether mandatory or discretionary, held by the
255 trustee of the trust, including a power held by the beneficiary as the
256 sole trustee or a cotrustee of the trust, to make distributions to or for
257 the benefit of a person who the beneficiary has an obligation to
258 support, if the power is exercisable by the trustee only in accordance
259 with an ascertainable standard relating to such person's individual
260 health, education, support or maintenance within the meaning of
261 Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue
262 Code of 1986, and the regulations thereunder, as in effect on the

263 effective date of this section.

264 (b) A beneficiary holding a power set forth in subsection (a) of this
265 section shall not, during the period the power may be exercised or
266 upon the lapse, release or waiver of the power, be treated as a settlor of
267 the trust.

268 Sec. 10. (NEW) (*Effective October 1, 2007*) Sections 1 to 9, inclusive, of
269 this act shall not apply to statutory trusts created pursuant to chapter
270 615 of the general statutes to the extent that the provisions of said
271 sections are inconsistent with the provisions of said chapter.

272 Sec. 11. Section 52-321 of the general statutes is repealed and the
273 following is substituted in lieu thereof (*Effective October 1, 2007*):

274 [Except as provided in sections 52-321a and 52-352b:

275 (a) If property has been given to trustees to pay over the income to
276 any person, without provision for accumulation or express
277 authorization to the trustees to withhold the income, and the income
278 has not been expressly given for the support of the beneficiary or his
279 family, the income shall be liable in equity to the claims of all creditors
280 of the beneficiary.

281 (b) Any creditor of the beneficiary who has secured a judgment
282 against the beneficiary may bring an action against him and serve the
283 trustees with garnishee process, and the court to which the action is
284 returnable may direct the trustees to pay over the net income derived
285 from the trust estate to the judgment creditor, as the income may
286 accrue, until the creditor's debt is satisfied.

287 (c) The court having jurisdiction over the fund may make such an
288 order for payment pursuant to subsection (b) when the beneficiary is a
289 nonresident of this state, as well as when the beneficiary is a resident,
290 but in the case of a nonresident beneficiary notice shall be given to the
291 nonresident of the action against him as provided in section 52-87. The
292 nonresidence of the beneficiary shall not deprive the court of authority
293 to make such an order.

294 (d) If any such trust has been expressly provided to be for the
 295 support of the beneficiary or his family, a court of equity having
 296 jurisdiction may make such order regarding the surplus, if any, not
 297 required for the support of the beneficiary or his family, as justice and
 298 equity may require.

299 (e) The defendant trustee in any such action]

300 In any action brought by a creditor of a beneficiary of a trust to
 301 enforce a judgment against the beneficiary in which a defendant
 302 trustee is served with garnishee process, the trustee shall be entitled to
 303 charge in the administration account of the trust such expenses and
 304 disbursements as the court to which the action is brought determines
 305 to be reasonable and proper.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	New section
Sec. 2	October 1, 2007	New section
Sec. 3	October 1, 2007	New section
Sec. 4	October 1, 2007	New section
Sec. 5	October 1, 2007	New section
Sec. 6	October 1, 2007	New section
Sec. 7	October 1, 2007	New section
Sec. 8	October 1, 2007	New section
Sec. 9	October 1, 2007	New section
Sec. 10	October 1, 2007	New section
Sec. 11	October 1, 2007	52-321

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Attorney General	GF - Reduce Cost Recovery	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None**Explanation**

Assets placed into a spendthrift trust under the bill could not be accessed by the state. Creations of these trusts would result in a state revenue loss from collections to the extent that individuals who owe money to the state create these trusts.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1243*****AN ACT CONCERNING SPENDTHRIFT AND DISCRETIONARY TRUSTS AND THE CLAIMS OF CREDITORS.*****SUMMARY:**

This bill:

1. creates a clear claims procedure for trustees and creditors that applies to revocable trusts after the settlor's death;
2. clarifies Connecticut law regarding the liability of trust assets to creditors' claims regardless of the type of distribution standard in the trust; and
3. authorizes spendthrift provisions in trusts and permits a spendthrift trust that names a beneficiary as the sole trustee or as a co-trustee; and
4. preserves Connecticut's existing law on creditors' rights to reach trust assets subject to beneficiary-held powers of appointment.

Under the bill, whether or not the trust contains a spendthrift provision, the property of a self-settled trust is subject to claims of the settlor's creditors. A "settlor" is the person who creates or contributes property to a trust. A "self-settled trust" is an irrevocable trust that includes the settlor as a beneficiary.

EFFECTIVE DATE: October 1, 2007

§ 1 — DEFINITIONS

The bill defines a "beneficiary" as a person that:

1. has a present or future interest in a trust, vested or contingent;
or
2. in a capacity other than that of trustee, holds a power of appointment over trust property. (A power of appointment is the right to direct the disposition of trust property within a class of persons designated in the trust agreement.)

A “charitable trust” is a trust, or part of a trust, created for the relief of poverty, the advancement of education or religion, the promotion of health, government, or municipal purposes or other purposes the achievement of which is beneficial to the community.

A “power of withdrawal” is a presently exercisable general power of appointment other than a power exercisable only with the consent of the trustee or a person holding an adverse interest.

The bill defines a “settlor” as a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to his contribution, except to the extent another person has the power to revoke or withdraw that portion.

A “spendthrift provision” means a term of the trust, which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

Finally, the bill defines “terms of the trust” as the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust document or as may be established by other evidence that would be admissible in court.

§ 2 — RIGHTS OF BENEFICIARY’S CREDITOR OR ASSIGNEE

The bill empowers the court to authorize a beneficiary’s creditor or assignee to reach the beneficiary’s interest by attaching present or future distributions to, or for the benefit of, the beneficiary, if a beneficiary’s interest is not protected by a spendthrift provision. The

court may limit the extent to which a beneficiary or creditor may attach distributions to what is appropriate under the circumstances.

The bill prohibits a trustee of a charitable trust and a person holding and administering an endowment fund or an institutional fund (see BACKGROUND) from mortgaging, pledging, using as collateral, or otherwise encumbering any of the following assets of a charitable trust, endowment fund, or institutional fund, if the source of the asset was a charitable gift:

1. funds for which the settlor restricted expenditures for a purpose other than the general purposes of a charity or institution and
2. the principal or corpus of a charitable trust or institutional fund that is restricted to investment or endowment purposes.

The bill prohibits creditors, receivers appointed pursuant to state law, or trustees appointed under the federal bankruptcy code from attaching, garnishing, liening, or otherwise using funds subject to the prohibition described above, to pay a charitable beneficiary's debt or the receivership or bankruptcy estate.

§ 3 — SPENDTHRIFT PROVISIONS IN TRUSTS

The bill specifies that a spendthrift provision is valid only if it restrains both voluntary and involuntary transfers of a beneficiary's interest.

It also specifies that a term of a trust:

1. providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar meaning, is sufficient to restrain both a voluntary and an involuntary transfer of the beneficiary's interest; or
2. permitting the voluntary transfer of a beneficiary's interest, but only with the consent of another person or entity the trust specifies, including the trustee, is an acceptable restraint on voluntary transfer.

The bill prohibits a beneficiary from transferring an interest in a trust in violation of a valid spendthrift provision. Also it prohibits, except as it otherwise provides, a beneficiary's creditor or assignee from reaching the interest or a distribution by the trustee before the beneficiary receives it.

The bill permits a spendthrift provision that names a beneficiary as the sole trustee or as a co-trustee.

The bill specifies that a spendthrift provision is enforceable against a former spouse of a beneficiary.

§ 4 — EXCEPTIONS TO SPENDTHRIFT PROVISION

Even if a trust contains a spendthrift provision, the bill allows a beneficiary's child who has a judgment or court order for support or maintenance to obtain a court order attaching present or future distributions to or for the beneficiary's benefit, but only if the distribution may be made for the beneficiary's support under the terms of the trust. The bill specifies that the term "child" includes anyone for whom an order or judgment for child support has been entered in Connecticut or another state.

The bill specifies that, as under current law, a spendthrift provision is unenforceable against a claim of the U.S. or Connecticut government to the extent a law so provides.

§ 5 — DISCRETIONARY TRUSTS; CLAIMS OF BENEFICIARIES' CREDITORS

Under the bill, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary (other than a child with a valid support order) may not compel a distribution that is subject to the trustee's discretion, even if (1) the discretion is expressed in the form of a standard of distribution or (2) the trustee has abused the discretion.

The bill specifies that this protection applies to all beneficiaries, including the sole trustee or a co-trustee of the trust with respect to

powers of distribution and withdrawal the bill specifies.

But if a trustee has not complied with a distribution standard or has abused a discretion:

1. the court may order a distribution to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and
2. the court may direct the trustee to pay to the child such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

The bill also specifies that it does not limit a beneficiary's right to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution, even if a creditor has no right to do so.

§ 6 — CREDITOR'S CLAIM AGAINST SETTLOR

Under the bill, whether or not it contains a spendthrift provision, the property of a revocable trust is subject to claims of the settlor's creditors during the settlor's lifetime. A trust is "revocable" if the settlor can revoke it without the consent of the trustee or a person holding an adverse interest.

With respect to an irrevocable trust, a settlor's creditor or assignee may reach the maximum amount that can be distributed to the settlor or for the settlor's benefit. If a trust has more than one settlor, the amount a settlor's creditor or assignee may reach cannot exceed the settlor's interest in the portion of the trust attributable to his contribution. Thus, if the trustee has discretion to distribute the entire income and principal to the settlor, the bill places the settlors' creditors in the same position as if the trust had not been created.

With respect to certain trusts created under federal law, the bill authorizes the court to limit the award to a settlor's creditor to such relief as is appropriate under the circumstances. The court must consider, among any other factors it determines to be appropriate, the beneficiary's supplemental needs.

These trusts include a trust that meet the following criteria: (1) it contains the assets of an individual under age 65 who is disabled as defined by federal law; (2) it is established for the benefit of an individual by a parent, grandparent, legal guardian, or a court; and (3) Connecticut will receive all amounts remaining in the trust when the individual dies, up to an amount equal to the total medical assistance paid on behalf of the individual under a state plan under federal law.

These trusts also include a trust containing the assets of an individual who is disabled as defined in federal law that meets the following conditions:

1. the trust is established and managed by a non profit association;
2. a separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts;
3. accounts in the trust are established solely for the benefit of individuals who are disabled by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court; and
4. to the extent that amounts remaining in the beneficiary's account upon the beneficiary's death are not retained by the trust, the trust pays to the state from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the state plan.

The bill prohibits a settlor's creditor or assignee from reaching the assets of an irrevocable trust, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms

of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal payable by the settlor under the law imposing such tax.

The bill also prohibits a settlor's creditor or assignee from reaching the assets of an irrevocable trust, except in accordance with the terms of the trust instrument, if:

1. all of the settlors of the trust are commercial entities organized to conduct business activities;
2. at least one trustee is a commercial entity organized to conduct business activities; and
3. the trust is created by contract in order to facilitate a business purpose of the settlors.

After the settlor's death, and subject to the settlor's right to direct the source from which liabilities will be paid, (except as otherwise provided by existing law regarding pension, retirement, death benefit and profit sharing plans, see CGS § 45a-472), the property of a trust that was revocable at the settlor's death is subject to certain claims. These are claims of creditors, costs of estate administration, funeral and burial expenses, and the family allowance to a surviving spouse and children as provided by existing law (see CGS § 45a-320), to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowance.

With respect to claims, expenses, and taxes regarding the settlement of a trust that was revocable at the settlor's death, any creditor's claim that would be barred against the fiduciary of a decedent's estate, the estate of the decedent, or any creditor or beneficiary of the decedent's estate, is barred against the trustee, the trust property, and the trust's creditors and beneficiaries once the claims period has expired.

The bill authorizes a trustee to use the optional notice procedures in existing law (CGS § 45a-357) for creditors in connection with

decedent's estates. (Generally, the optional procedures allow a fiduciary at any time to give notice to anyone he or she has reason to believe may have a claim. The notice gives such creditors 90 days from the date they received notice to make a claim. A creditor may ask the probate court for an additional 30 days.)

Once the trustee complies with these procedures, anyone so notified is barred from asserting or recovering on any claim from the trustee, the trust property, or any creditor or beneficiary of the trust.

The bill establishes the same preference and order of payment of claims, expenses, and taxes for a revocable trust as apply to a decedent's estate (see CGS § 45a-365).

If any claim is not presented in writing to the fiduciary of the settlor's estate or the trustee (1) within 150 days from the date of the appointment of the first fiduciary of the settlor's estate, or (2) if no fiduciary is appointed, within 150 days from the newspaper notice of the settlor's date of death, then no trustee may be chargeable for any assets that a trustee may have paid or distributed in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee is deemed to have been made in good faith unless the creditor can prove that the trustee knew about the claims when making the payment or distribution. The 150-day period may not be interrupted or affected by a trustee's death, resignation, or removal. But the time during which there is no fiduciary in office may not be counted as part of such period.

The bill authorizes a trustee to cause a newspaper notice to be published at least once notifying everyone having claims to present their claims to the trustee. The newspaper notice must state: (1) the name of the trustee and the address at which claims should be presented, (2) that persons with claims should promptly present those claims to the trustee, and (3) that failure to promptly present any claim may result in the loss of rights to recover on such claim.

Except as the bill otherwise provides, during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property that is subject to the power.

Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in certain provisions of the federal tax code (see BACKGROUND).

§ 7 — OVERDUE DISTRIBUTION

Whether or not a trust contains a spendthrift provision, the bill provides that a beneficiary's creditor or assignee may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

A "mandatory distribution" means a distribution of income or principal that the trustee must make to a beneficiary including a distribution when the trust terminates. The term excludes a discretionary distribution, regardless of whether the terms of the trust (1) include a support or other standard to guide the trustee in making distribution decisions or (2) provide that the trustee "may" or "shall" make discretionary distributions, including distributions under a support or other standard.

§ 8 — PERSONAL OBLIGATIONS OF TRUSTEE

The bill specifies that trust property is not subject to the trustee's personal obligations, even if the trustee becomes insolvent or bankrupt.

§ 9 — PROTECTED POWERS LIMITS ON ABILITY OF BENEFICIARY'S CREDITORS TO ATTACH DISTRIBUTION

Under the bill, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary, other than a creditor of the settlor

if the settlor is a beneficiary, may not attach or compel a distribution of property that is subject:

1. to a power of withdrawal held by the beneficiary if the value of the property subject to the power does not exceed the greater of the amounts specified in relevant portions of the federal tax code (Under current law apparently this would be either \$12,000 or 5% of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied, whichever is greater (see BACKGROUND); and
2. except for certain child support obligations the bill recognizes, to a mandatory or discretionary fiduciary power, including a power held by the beneficiary as the sole trustee or a co-trustee, to make distributions to or for the benefit either of the beneficiary or a person who the beneficiary has an obligation to support, if the power is exercisable by the trustee only in accordance with an ascertainable standard relating to the beneficiary's individual health, education, support, or maintenance within the meaning of the federal tax code.

A beneficiary holding such a power of withdrawal or distribution may not be treated as a settlor of the trust during the period the power may be exercised or upon the lapse, release, or waiver of the power.

§ 10 — STATUTORY TRUSTS

The bill specifies that it does not apply to statutory trusts created under the Statutory Trust Act to the extent that it is inconsistent with that act (see BACKGROUND).

§ 11 — LIABILITY OF INCOME OF TRUST FUND TO CREDITORS

The bill eliminates the current spendthrift law (see § 3 above). Under the current spendthrift law, to have spendthrift protection, the trust has to be for the beneficiary's or his family's support and it only protects the trust's income.

Specifically, the bill eliminates a law that requires that trust income be liable in equity to the claims of all creditors of the beneficiary regarding property given to trustees with direction to pay over the income to any person, without provision for accumulation or express authorization to the trustees to withhold the income, and the income has not been expressly given for the support of the beneficiary or his family. Under the law the bill eliminates, a creditor of the beneficiary who has secured a judgment against him or her can institute a legal proceeding against him and serve the trustees with garnishee process. In such a case, the law allows a court to direct the trustees to pay over the net income derived from the trust estate to the judgment creditor, as the income may accrue, until the creditor's debt is satisfied.

Under such law, if any such trust has been expressly provided to be for the support of the beneficiary or his or her family, a court may make an order regarding the surplus, if any, not required for the support of the beneficiary or his family, as justice and equity may require.

Under existing law, unchanged by the bill, in any action brought by a beneficiary's creditor to enforce a judgment against the beneficiary in which a defendant trustee is served with garnishee process, the trustee can charge in the trust's administration account expenses and disbursements the court determines to be reasonable and proper.

BACKGROUND

Statutory Trusts

A "statutory trust" is an unincorporated association that files a certificate of trust and is created by a trust instrument under which property is or will be held, managed, administered, controlled, invested, or operated, or business or professional activities are carried on or will be carried on, by a trustee for the benefit of such person or persons as are, or may become, entitled to a beneficial interest in the trust property. They include trusts qualifying as a real estate investment trust or real estate mortgage investment conduits under federal law (CGS § 34-501 (2)).

Institutional Fund

An “institutional fund” is a fund held by an institution for its exclusive use, benefit, or purposes. But this does not include a fund:

1. held for an institution by a trustee that is not an institution, other than a fund that is held for a charitable community trust; or
2. in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund (CGS § 45a-527 (2)).

Endowment Fund

An “endowment fund” is an institutional fund, or any part of it, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument (CGS § 45a-527(3)).

Federal Tax Code-Protected Powers; Lapsed, Released, or Waived Power of Withdrawal (§§ 6 &9 of Bill)

The bill refers to the following provisions of the tax code: either (1) 26 USCA §§ 2041(b)(2) or 2514(e) and the applicable regulations, or (2) § 2503(b) and the applicable regulations, whichever is greater. Apparently, the current amount under (2) is \$12,000 but this is indexed and thus will change each year.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/10/2007)